

REMARKS

Claims 1-9 are now pending in the application, of which Claims 1-9 stand rejected. Claims 1, 2, and 7 have been amended. Support for the amendments can be found throughout the application, drawings and claims as originally filed and, as such, no new matter has been presented.

REJECTION UNDER 35 U.S.C. § 112

Claims 1-9 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention. Applicants direct the Examiner's attention to Claims 1, 2, and 7 which have been amended to overcome the Examiner's objections.

REJECTION UNDER 35 U.S.C. § 103

Claims 1-9 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over "Risk Analysis Techniques" by Geoffrey H. Wold and Robert F. Shriver, published in the Disaster Recovery Journal, Vol. 7, No. 3, in view of "A Multicontribution Activity-Based Income Statement" by Ali, published in the Journal of Cost Management in Fall 1994, pages 45-54.

"Prior art" is the pre-existing body of technological information found in, for example, printed publications, information known by others, public uses, and on-sale activity, against which a claimed invention is compared to determine whether the invention is novel and nonobvious. *See, e.g.,* McCarthy's Desk Encyclopedia of

Intellectual Property at pp. 472-474. "Prior art" is specifically defined by the Patent Act.

In particular, Sections 102(a), (b) and (g) of Title 35 U.S.C. define prior art as follows:

A person shall be entitled to a patent unless—

- (a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the Applicant for patent, or
- (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country more than one year prior to the date of the application for patent in the United States, or...
- (g) ...before such person's invention thereof, the invention was made in this country by another inventor who had not abandoned, suppressed, or concealed it...

Per the statute, Section 102(a) "prior art" is what is already "known or used by others" in the United States, or what is found in a "printed publication" anywhere in the world, but only if it predates a patent Applicant's date of invention. An Applicant's date of invention is his or her "conception" of the invention claimed in the patent. *See Mahurkar v. C.R. Bard*, 79 F.3d 1572, 1577 (Fed. Cir. 1996).

Section 102(b) also includes "printed publications" as "prior art" and adds "public use" and "on-sale" activity within the United States to the body of "prior art." To constitute "prior art" under Section 102(b), however, the "printed publication," "public use," or "on-sale" activity must predate an Applicant's priority date for a patent by more than a year.

Finally, Section 102(g) addresses the inventive activities of others that predate a patent Applicant's date of invention. Inventions of others that predate the patent

Applicant's invention that were not abandoned, suppressed or concealed can also qualify as "prior art."

Applicants respectfully challenge the Office's contention that the Wold reference constitutes a publication which is prior art to the instant application. The Office has not introduced "clear and convincing evidence on all issues relating to the status of a particular reference as prior art." *Sandt Tech., Ltd. v. Resco Metal and Plastics Corp.*, 264 F.3d 1344, 1350 (Fed. Cir. 2001) (citing *Mahurkar*, 79 F.3d at 1576). The Authenticity of References found on the website www.Archive.com are not authenticated. Further, Applicants submit that merely "posting" a web page in 1998 does not constitute "publication," inasmuch as there is no showing the websites were categorized and searchable at the time asserted. Absent other showings, Applicants submit the reference cited is not 102(b) prior art.

Notwithstanding evidentiary issues related to the cited references, Applicants respectfully assert a prima facie case of obviousness has not been made in the previous Office Action.

In rejecting the claims, the Office acknowledges several of the deficiencies of the references. While Applicants agrees the references are deficient, Applicants submit several of the limitations are not taught.

In this regard, Applicants submit that the references do not teach or suggest calculating local availabilities for manufacturing; calculating constraint availabilities due to production limitations, calculating forecasted and actual production of components; and, calculating the production mix for at least one of the plurality of manufacturing plants. Further, Applicants submit the references do not teach conducting an evaluation

as to property loss risk measures by evaluating forecast contribution margin and the actual contribution margin. Simply put, the references do not teach or suggest each limitation as claimed. As such, the rejection of these claims is improper.

CONCLUSION


It is believed that all of the stated grounds of rejection have been properly traversed, accommodated, or rendered moot. Applicants therefore respectfully request that the Examiner reconsider and withdraw all presently outstanding rejections. It is believed that a full and complete response has been made to the outstanding Office Action and the present application is in condition for allowance. Thus, prompt and favorable consideration of this amendment is respectfully requested. If the Examiner believes that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at (248) 641-1600.

Respectfully submitted,

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